# Supreme Court of the United States

OCTOBER TERM, 1925

BENJAMIN H. CLARK and CHARLES BIGGS, a Partnership doing business under the firm name of CLARK AND BIGGS,

*Appellants,*

v.

GEORGE T. POOR, C. C. MARSHALL, and FRANK B. MAULLAR, constituting THE PUBLIC UTILITIES COMMISSION OF OHIO,

*Appellees.*

## BRIEF OF APPELLANTS.


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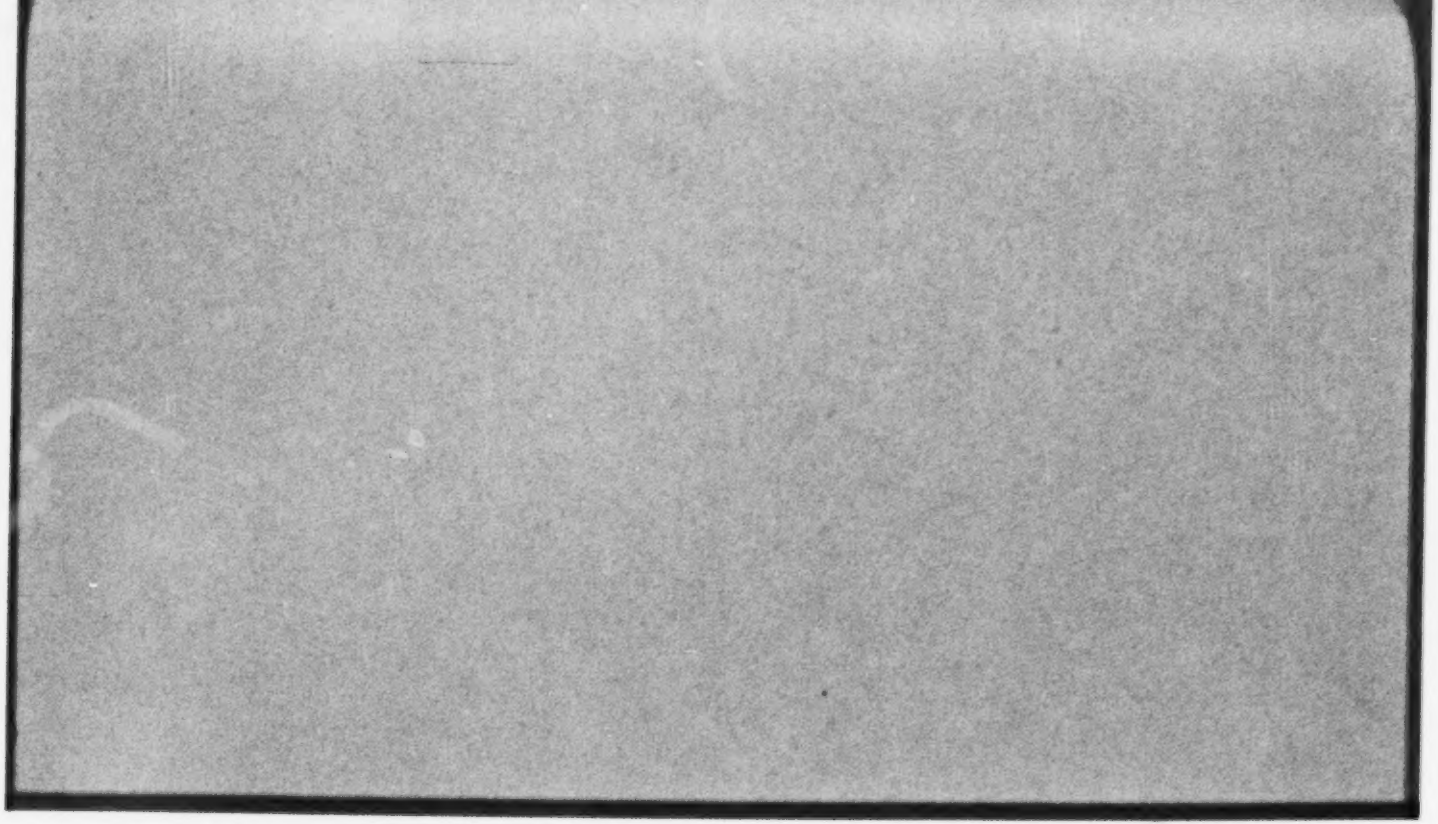

# INDEX


PAGE

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED ..... 1

Date and nature of judgment to be reviewed ..... 1, 2

Decree of lower court ..... 2

Statutory provisions under which jurisdiction is invoked ..... 2

STATEMENT OF THE CASE ..... 2

SPECIFICATION OF ASSIGNED ERRORS ..... 8

ARGUMENT ..... 8

1. Appellees, the Public Utilities Commission of Ohio, Are Without Legal Power to Require Appellants First to Apply For and Obtain a Certificate of Public Convenience and Necessity as a Condition Precedent to Engaging Solely in Interstate Commerce in Ohio ..... 8

2. The Public Utilities Commission of Ohio Can Not Require the Payment of the License Tax Mentioned in General Code of Ohio, Section 614-94 ..... 14

CONCLUSION ..... 23

APPENDIX A ..... 25

APPENDIX B ..... 26

## TABLE OF AUTHORITIES


| | PAGE |
|---|---|
| Act of Congress, June 8, 1910, c. 309, sec. 17, 36 Stat. 557, as amended 43 Stat. 938 | 2, 25, 26 |
| Adams Express Co. v. New York, 232 U. S. 14 | 15, 22, 23 |
| Alpha Portland Cement Co. v. Massachusetts, 268 U. S. 203 | 15 |
| Brennan v. Titusville, 153 U. S. 289 | 15 |
| Buck v. Kuykendall, 267 U. S. 307 | 10, 11, 14, 17 |
| Bush Co. v. Maloy, 267 U. S. 317 | 11, 14 |
| Commonwealth v. O'Neil, 233 Mass. 537, 124 N. E. 482 | 23 |
| Crenshaw, v. Arkansas, 227 U. S. 389 | 15 |
| Crutcher v. Kentucky, 141 U. S. 47 | 9, 16 |
| General Code of Ohio, sections 614-84 to 614-102 incl.; 6291, 6292, 6292-1 | 26-42 |
| Hendrick v. Maryland, 235 U. S. 610 | 17, 18, 21, 22, 23 |
| Hennington v. Georgia, 163 U. S. 299 | 16 |
| Hissem v. Guram, 112 O. S. 59 | 19, 21 |
| Interstate Motor Transit Co. v. Kuykendall, 284 Fed. 882 | 17 |
| Kane v. New Jersey, 242 U. S. 160 | 22, 23 |
| Lake Shore & M. S. Ry. Co. v. Ohio, 173 U. S. 285 | 16 |
| Liberty Highway Co. v. Michigan Public Utilities Commission, 294 Fed. 703 | 17 |
| Michigan Public Utilities Commission v. Duke, 266 U. S. 570 | 16, 19, 21 |
| New York, N. H. & H. R. R. Co. v. New York, 165 U. S. 628 | 16 |

Real Silk Hosiery Mills v. Portland, 268 U. S. 325 11
Rearick v. Pennsylvania, 203 U. S. 507 15
Rest Rail Transit Co. v. Marshall, 8 Fed. (2d) 635 17
Robbins v. Shelby Taxing District, 120 U. S. 489, 497 15
Sault Ste. Marie v. International Transit Co., 234 U. S. 333 15
Smith v. Alabama, 124 U. S. 465 16
Texas Transport & Terminal Co. v. New Orleans, 264 U. S. 150 15
39 Harvard Law Review 900 11

No. 906

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*Appellants,*

v.

GEORGE T. POOR, C. C. MARSHALL, and FRANK B. MAULLAR, constituting THE PUBLIC UTILITIES COMMISSION OF OHIO,

*Appellees.*

## BRIEF OF APPELLANTS

### GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The appeal in this case is from a decree of the District Court of the United States for the Southern District of Ohio, Eastern Division, dismissing appellants' petition and denying the injunction against the appellees prayed for therein (R. 23). This suit was brought to enjoin the appellees, defendants below, from enforcing against appellants, complainants below, the provisions of the Ohio Motor Transportation Act of 1923, as amended in 1925, being General Code of Ohio, Sections 614-84 to 614-102 inclusive

(quoted in full in the Record at pages 67 to 83 inclusive). It was heard before a court of three judges, Honorable Maurice H. Donahue, Circuit Judge, and Honorable Benson W. Hough and D. C. Westenhaver, District Judges, on an application for injunction pursuant to the provisions of the Act of Congress, June 8, 1910, chapter 309, Section 17, 36 Stat. 557, as amended by the Act of Congress of February 13, 1925, 43 Stat. 938 (Section 266 of the Judicial Code). Upon due notice to the Governor and the Attorney General of the State and appellees herein (R. 20), final hearing was had and a final decree denying permanent injunction in this cause and dismissing the bill was entered December 8, 1925 (R. 23). A direct appeal was thereupon taken to this court in accordance with the provisions of Section 266 of the Judicial Code (set forth in Appendix A of this brief).

## STATEMENT OF THE CASE

The appellants are a partnership engaged in business as common carriers for hire of goods, wares and merchandise with their office and principal place of business at Aurora, Indiana. As a part of this business they own and operate several motor vehicles which they use in the transportation of goods, wares and merchandise of their customers, between Aurora, Indiana, and other cities and points in Indiana and Cincinnati, Ohio (R. 2, 12). *It is undisputed that appellants are not engaged in any intrastate business in Ohio* (R. 21). It is further undisputed that complainants have invested in their business a large amount of capital, employ a large number of persons and have paid all license fees required by the laws of the State of Indiana for the operation of their motor vehicles, and have received from the State of Indiana the necessary license tags to enable them to operate these motor vehicles upon the streets and highways of the State of Indiana (R. 2).

The legislature of the State of Ohio on March 29, 1923, passed an Act generally known as the Freeman-Collister Law, which became effective April 28, 1923. This Act and the amendments thereto are designated as Sections 614-84 to 614-102 inclusive of the General Code of Ohio (R. 67-83).

This Act, as amended, provides, among other things, that no motor transportation company shall operate any motor propelled vehicle for the transportation of persons or property or both, for hire, on any public highway in Ohio, except in accordance with the provisions of said Act (Section 614-85, R. 71); that no motor transportation company shall begin to operate any motor propelled vehicle for the transportation of persons or property or both, for hire, between fixed termini or over a regular or irregular routes in the State of Ohio without first obtaining from the Public Utilities Commission a certificate declaring that public convenience and necessity require such operation (Section 614-87, R. 72); that the Public Utilities Commission of the State of Ohio is vested with power and authority to supervise and regulate each such motor transportation company in Ohio, to fix, alter and regulate rates, to regulate the services and safety of operation of each such motor transportation company, to prescribe safety regulations and designate stops for services and safety on established routes, to require the filing of annual and other reports and of other data by such motor transportation companies, to provide uniform accounting systems and to supervise and regulate motor transportation companies in all matters affecting the relationship between such companies and the public (Section 614-86, R. 71); that said Commission shall adopt rules (Section 614-86, R. 71), prescribe the manner and form in which such motor transportation companies shall apply for the certificates of public convenience and necessity, and that among other rules adopted there shall be the following (Section 614-90, R. 75):

A. Application shall be made in writing on the blanks furnished by the Commission and shall show the principal office or place of business and residence of such motor transportation company.

B. Shall contain full information concerning the physical property used or to be used by the applicants.

C. The complete route over which the applicant operates or desires to operate, showing the number of miles of said route in each municipality and county.

D. The proposed time schedule or schedules or time cards of the applicant, if operating between fixed termini or over a regular route.

E. The schedule or tariff showing the passenger or freight rates to be charged between the several points, if operating between fixed termini or over a regular route.

This Act, as amended, further provides that said application shall contain other information, such as maps, showing the highway or highways and public places upon and over which such motor transportation company is to operate, and the number and kind of motor vehicles to be used (Section 614-91, R. 75); that the applicant shall give notice by publication in a newspaper, once a week for three consecutive weeks, of the fact that such an application has been filed and will be heard by said Commission (Section 614-91, R. 75); and that said Commission shall fix a date for the hearing of said application and give notice thereof to the applicant and all other motor transportation companies operating in the same territory (Section 614-92, R. 76).

This Act, as amended, further provides that such motor transportation company shall at the time of the issuance of such certificate of convenience and necessity, and annually thereafter, on or between January 1st and January 15th of each calendar year, pay to the Treasurer of the State of Ohio certain taxes "for the expense of the administration and enforcement of the provisions of Sections 614-84 to

614-102 of the General Code, and for the maintenance and repair of the highways of the State" (Section 614-94, R. 77), fifty (50%) per cent of which taxes are apportioned to the municipal corporations and counties into, through or along which the route of each such motor transportation company runs or extends, in accordance with the lineal miles of route in each, and the remaining fifty (50%) per cent shall belong to the State of Ohio and be paid into the State Treasury of the State Maintenance and Repair Fund (Section 614-95, R. 79), which fund is available for the use of appellees in defraying the expenses incident to maintaining the bureau of the department for carrying out and enforcing the provisions of said Sections 614-84 to 614-102, including the payment of salaries, traveling expenses, printing and other expenses and for the use of the director of highways and public works (Section 614-96 [2], R. 80).

This Act, as amended, further provides that no certificate of convenience and necessity shall be issued by the Commission to any motor transportation company until it shall have filed with the Commission a liability insurance policy or bond, satisfactory to the Commission, in such sum and with such other terms and provisions as the Commission may deem necessary adequately to protect the interests of the public having due regard for the number of persons and amount of property affected (Section 614-99, R. 81), which policy, policies or bonds shall insure the motor transportation company against loss sustained by reason of the death of or injury to persons and for loss of or damage to property resulting from the negligence of such motor transportation company, and shall have filed with the Commission a freight cargo insurance policy or bond adequately to protect the interests of the shipping public, which policy or bond shall insure the motor transportation company against all loss in excess of Fifty ($50.00) Dollars sustained

by reason of any loss or damage to the property being transported (Section 614-99, R. 81-82).

This Act, as amended, further provides that every officer, agent or employee of any corporation, and every other person who violates or fails to comply with or who procures, aids or abets in the violation of provisions of Sections 614-84 to 614-102, inclusive, of the General Code of Ohio, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Public Utilities Commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding One Thousand ($1,000.00) Dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment (Section 614-100, R. 82).

This Act, as amended, also provides that before granting any certificate the Commission shall take into consideration other existing transportation facilities in the territory for which a certificate is sought, and in case it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the Commission shall not grant such certificate (Section 614-84, R. 73).

Again, the Act provides that the Commission may at any time for a good cause suspend and upon at last five days notice to the grantee of any certificate and an opportunity to be heard, revoke, alter or amend any certificate issued under the provisions thereof (R. 73).

Appellees sought to enforce certain of the provisions of said sections above referred to against appellants, doing in Ohio an interstate business exclusively, particularly those sections requiring the obtaining of a certificate of public

convenience and necessity, the payment of the taxes specified in General Code of Ohio, Section 614-94, and the indemnity bond specified in General Code of Ohio, Section 614-99, and appellees notified appellants that unless they complied with said sections and first obtained a certificate of public convenience and necessity, paid the said taxes and gave such indemnity bond, the appellees would cause their vehicles to be stopped on the highways in the State of Ohio and their drivers to be arrested and the prescribed penalties to be imposed upon them (R. 6, 13, 14, 16, 17). The answer of the appellees filed in this cause admitted that they, "acting as The Public Utilities Commission of Ohio, are undertaking to enforce the provisions of the motor transporation law of Ohio" (R. 11). Vehicles of appellants, engaged in business in Ohio in interstate commerce exclusively, were stopped on the public highways of the State, their drivers arrested and criminal prosecutions instituted against them, thus causing irreparable loss to appellants (R. 13, 17).

Appellants made no application to appellees for a certificate of public convenience and necessity. Appellees, by their affidavits (R. 18, 19), assert that if application were made by appellants to the Public Utilities Commission of Ohio for such a certificate, and if payment were made of the taxes on each vehicle, as provided by Section 614-94, and insurance policies or indemnity bond furnished, as provided by Section 614-99, and if there should be compliance with other police regulations and orders of the Commission as is required of intrastate haulers, such certificate would be granted.

The court, in its opinion (R. 20-23), held as to appellants and the facts of this case, that the provisions of the Ohio Motor Transportation Act relating to liability and cargo insurance requirements are unreasonable and invalid (R. 22), that the taxes imposed by said Act (Section 614-94) do

not constitute a burden on interstate commerce and such taxes are, therefore, valid and that appellants must first apply to The Public Utilities Commission of Ohio for a certificate of public convenience and necessity before they can operate in interstate commerce in Ohio (R. 22).

The assignment of errors intended to be urged (R. 25, 26; R. 86, 87), briefly summarized, are:

1. The court erred in holding that appellees can require appellants to apply for and obtain a certificate of public convenience and necessity as a condition of their right to operate automobile trucks, engaged in operating entirely in interstate commerce in the State of Ohio, and in holding that appellants are without equity on the ground that they had not theretofore applied to appellees for such a certificate.

2. The court erred in holding that the tax imposed by General Code of Ohio, Section 614-94, is valid, as applied to appellants, who are admittedly common carriers engaged solely in interstate commerce in Ohio, when such a tax is not attempted to be applied to others using the roads of Ohio in the same manner and to the same extent as appellants, though not common carriers.

3. The court erred in denying appellants' application for an injunction and in dismissing their bill of complaint.

## ARGUMENT.

### Appellees, the Public Utilities Commission of Ohio, Are Without Legal Power to Require Appellants First to Apply For and Obtain a Certificate of Public Convenience and Necessity as a Condition Precedent to Engaging Solely in Interstate Commerce in Ohio.

Decisions of this Court are numerous to the effect that a state can not make its permission, or the granting of

a certificate or license, a condition precedent to engaging solely in interstate commerce.

In *Crutcher* v. *Kentucky*, 141 U. S. 47, this Court said:

> "It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. Would any one pretend that a state legislature could prohibit a foreign corporation,—an English or a French transportation company, for example,—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? And why not? Evidently because the matter is not within the province of state legislation, but within that of national legislation. * * * As was said by Mr. Justice Lamar * * * 'It is well settled by numerous decisions of this court, that a state can not under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce, or impose any burdens upon such commerce within its limits.'
>
> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it." Citing cases (at pages 57, 58).

General Code of Ohio, Section 614-90 (R. 75), provides that The Public Utilities Commission of Ohio shall adopt rules and prescribe the manner and form in which motor transportation companies shall apply for certificates of public convenience and necessity. The statute further requires legal notice by way of newspaper advertising, before any hearing can be had (Section 614-91, R. 75). In view of the principles announced by this Court in the *Crutcher* Case and

affirmed in numerous decisions thereafter (see *infra*), can it be urged that appellants, concededly engaged in Ohio solely in interstate commerce, can be required so to apply and obtain a certificate before being permitted to carry on such interstate commerce business?

In *Buck v. Kuykendall*, 267 U. S. 307, the right of the State of Washington to regulate common carriers for hire and to prohibit the use of highways by auto vehicles over regular routes, without first obtaining a certificate of public convenience and necessity, was considered by this Court.

Buck, a citizen of Washington, wished to operate an automobile stage line as a common carrier for hire exclusively for through interstate passengers and express, over the Pacific Highway between Seattle, Washington, and Portland, Oregon. He obtained from Oregon the license prescribed by its laws. Having complied with the laws of Washington relating to motor vehicles, and alleging his willingness to comply with all applicable regulations, Buck nevertheless was denied a certificate of public convenience and necessity. He thereupon brought an action to enjoin interference by the State officials with the operation of the projected line.

This Court, in reversing the three judge court below, said:

> "The provision here in question is of a different character. Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. It prohibits such use to some persons while permitting it to others for the same purpose and in the same manner. Moreover, it determines whether the prohibition shall be applied by resort, through state officials, to a test which is peculiarly

within the province of federal action—the existence of adequate facilities for conducting interstate commerce. The vice of the legislation is dramatically exposed by the fact that the State of Oregon had issued its certificate which may be deemed equivalent to a legislative declaration that, despite existing facilities, public convenience and necessity required the establishment by Buck of the auto stage line between Seattle and Portland. Thus, the provision of the Washington statute is a regulation, not of the use of its own highways, but of interstate commerce. Its effect upon such commerce is not merely to burden but to obstruct it. Such state action is forbidden by the Commerce Clause." (Pages 315, 316.)

In a note in 39 Harvard Law Review 900, this case is cited as authority for the proposition that a State can not require a certificate of convenience and necessity of a motor vehicle operating for hire exclusively in interstate commerce.

Again, in *Bush Co.* v. *Maloy*, 267 U. S. 317, a Maryland statute prohibiting common carriers of merchandise or freight by motor vehicle from using public highways over specified routes without a permit was considered by this Court, and the statute was held unconstitutional as applied to one desirous of using the highways as a common carrier in exclusively interstate commerce. This Court, in reversing a judgment of the Court of Appeals of Maryland dismissing a bill for injunction, said:

"The state action in the *Buck* Case was held to be unconstitutional, not because the statute prescribed an arbitrary test for the granting of permits, or because the Director of Public Works had exercised the power conferred arbitrarily or unreasonably, but because the statute as construed and applied invaded a field reserved by the Commerce Clause for federal regulation." (At pages 324, 325.)

It is contended by appellees that the case at bar is distinguishable, on the ground that appellants did not apply for such certificate of public convenience and necessity and that had they so applied such certificate would have been granted.

In this connection, we invite the attention of the Court to the affidavit of the appellees filed herein (R. 18 and 19) that such certificate would be granted only upon "• • • the filing of insurance papers, the payment of the tax prescribed by the law, and complying with other police regulations and orders of the Commission the same as intrastate haulers," by appellants. We shall consider subsequently in this brief the legal right of appellees to compel the payment of the tax and compliance with other provisions of the State Motor Transportation Law as a condition of obtaining a certificate to engage in interstate commerce in Ohio. We further contend, however, that The Public Utilities Commission of Ohio has no right to require an application for such a certificate or the issuance of such a certificate as a condition of so engaging in interstate commerce in that state.

The contention of appellees, as set forth in their affidavit filed in this cause (R. 18, 19), that appellants must not only file insurance papers and pay the tax but also comply with other police regulations and orders of the Commission, as is required of intrastate haulers, is vague and indefinite, since there is nothing in the record to show which sections of the Ohio Motor Transportation Act are considered by the appellees as constituting purely police regulations and orders. The same can also be said of their contention that they "• • • have never attempted to apply to the motor transportation companies any uniform system of accounting or any other section of the Public Utilities law which would be inapplicable or impracticable if so

applied" (R. 19). This is clearly a legal conclusion. What sections would be inapplicable or impracticable as applied to interstate common carriers? Again, appellants merely say that they *have never attempted* to apply such sections and do not allege that they will not do so in the future. Even the latter allegation would not prevent appellees or any subsequent members of the Public Utilities Commission of Ohio from changing their minds.

Moreover, the issues in this case clearly show that appellees would not grant a certificate of public convenience and necessity in any event unless appellants had complied with the insurance and tax provisions of the Ohio Motor Transportation Act. The court below concedes that the requirement of the insurance provisions as to appellants is unreasonable and invalid (R. 22). Yet the court was of the opinion that appellants were without equity because they had not filed an application and had not offered to comply with the provisions of the Ohio statute, when at least one of these provisions was held invalid and unlawful. Had appellants filed such an application and offered to comply with the law, they might have been placed in the position of having waived their rights to complain or being estopped from claiming the invalidity of any of the provisions of the act.

True, the court, in its opinion (R. 22), says that "• • • this court can not now assume that defendants should refuse such a certificate with requirements limited in accordance with the views expressed herein and in opinion in the Red Ball Transit Co. case," but whether the appellants should have first applied for a certificate of public convenience and necessity should be determined by the issues as disclosed by the pleadings and not on the basis of a possible future situation which might result because of a statement in the opinion.

In the *Bush* Case, the suit was brought in Maryland to restrain state officials "from interfering with such use of the company's trucks." The plaintiff maintained that, *regardless of permit*, it was entitled to use the highways as a common carrier in exclusively interstate commerce. The affirmance of this decree by the highest court of Maryland was reversed. (See page 324.) This Court did not enjoin the state officials from refusing to issue a certificate of public convenience and necessity, but enjoined interference with the complainant's vehicles. Thus, it would seem that the Bush Company was permitted to operate in interstate commerce wholly without regard to the state statutory requirements as to application and issuance of a certificate.

Likewise, in the *Buck* Case, an injunction prayed for and granted by this Court was against interference by State officials with the operation of the projected line of complainant. The Court did not require Buck to apply for and obtain a certificate of public convenience and necessity before operation in interstate commerce on the highways of the State, nor did the Court enjoin the State Director of Public Works, defendant in that case, from refusing to grant the certificate. As in the Bush case, interference with complainant's vehicles was enjoined without the requirement of such a certificate.

## The Public Utilities Commission of Ohio Can Not Require the Payment of the License Tax Mentioned in General Code of Ohio, Section 614-94

If the state can not regulate interstate commerce, it follows that it can not require the payment of a license or a franchise tax for the privilege of engaging in interstate commerce. As recently as the case of *Real Silk Hosiery Mills* v. *Portland*, 268 U. S. 325, this Court held invalid,

as to persons taking orders to be filled by interstate shipments of goods, a municipal ordinance requiring the payment of a license fee of every person who goes from place to place taking orders for goods for future delivery, on the ground that such ordinance constituted an unconstitutional interference with interstate commerce. The Court stated:

> "Considering former opinions of this court we can not doubt that the ordinance materially burdens interstate commerce and conflicts with the Commerce Clause. *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 497; *Brennan* v. *Titusville*, 153 U. S. 289; *Rearick* v. *Pennsylvania*, 203 U. S. 507; *Crenshaw* v. *Arkansas*, 227 U. S. 389; *Texas Transport Co.* v. *New Orleans*, 264 U. S. 150; *Alpha Portland Cement Co.* v. *Commonwealth of Massachusetts*, 268 U. S. 203." (Page 335.)

In *Texas Transport & Terminal Co.* v. *New Orleans*, 264 U. S. 150, a state license tax which was sought to be laid upon the business of a corporation employed as agent of owners of vessels engaged exclusively in interstate and foreign commerce was held unconstitutional and in contravention of the Commerce Clause of the Constitution of the United States and an interference with and tax upon interstate commerce.

In *Sault Ste. Marie* v. *International Transit Co.*, 234 U. S. 333, this Court affirmed an order granting an injunction against a municipality requiring a license and tax for ferry boats engaged in interstate commerce on the ground that this was a burden on interstate commerce and beyond the powers of the state. The Court further held that a state can not make its consent a condition precedent to engaging in interstate commerce nor demand a price for such consent.

In *Adams Express Co.* v. *New York*, 232 U. S. 14, the validity, as applied to interstate commerce, of an ordinance

which prohibited the exercise of the business of expressmen except under an annual license granted by the Mayor and revocable by him was considered by this Court. It was said that if the provisions of the ordinance

> "* * * be deemed to require that a license must be obtained as a condition precedent to conducting the interstate business of an express company, we are of the opinion that so construed they would be clearly unconstitutional. It is insisted that, under the authority of the State, the ordinances were adopted in the exercise of the police power. But that does not justify the imposition of a direct burden upon interstate commerce. Undoubtedly, the exertion of the power essential to assure needed protection to the community may extend incidentally to the operations of a carrier in its interstate business, provided it does not subject that business to unreasonable demands and is not opposed to Federal legislation. *Smith* v. *Alabama*, 124 U. S. 465; *Hennington* v. *Georgia*, 163 U. S. 299; *N. Y., N. H. & H. R. R. Co.* v. *New York*, 165 U. S. 628; *Lake Shore & M. S. Ry. Co.* v. *Ohio*, 173 U. S. 285. It must, however, be confined to matters which are appropriately of local concern. It must proceed upon the recognition of the right secured by the Federal Constitution. Local police regulations can not go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and prohibit its exercise in the absence of a local license," and

citing *Crutcher* v. *Kentucky*, to the effect that

> "* * * a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it."

The Court below, on the authority of the case of *Michigan Public Utilities Company* v. *Duke*, 266 U. S. 570, held that the provision of the state statute requiring all carriers to take out certain liability or cargo insurance as a

condition of engaging in business as a common carrier was invalid as applied to interstate carriers (R. 22). The court, however, on the authority of *Red Ball Transit Co. v. Marshall*, 8 Fed. (2d) 635, decided the same day by the same court as the case at bar, was of the opinion that the tax required by General Code of Ohio, Section 614-94, is not invalid as applied to a motor transportation company engaged in interstate commerce. An examination of the decision in the *Red Ball* case shows that the court relied upon *Liberty Highway Co. v. Michigan Public Utilities Commission*, 294 Fed. 703, and on *Hendrick v. Maryland*, 235 U. S. 610. So far as the *Liberty Highway Company* case is concerned, the opinion of the three judge court therein (of which Circuit Judge Donahue was also a member) in turn shows reliance on *Interstate Motor Transit Co. v. Kaykendall*, 284 Fed. 882, which case was exactly parallel in facts and decision to the *Buck v. Klykendall* case in 295 Fed. 197. This latter case was reversed by the Supreme Court of the United States in 267 U. S. 307.

The statute considered in *Hendrick v. Maryland*, 235 U. S. 610, is in no wise parallel to the statute in this case. In the *Hendrick* case, the court was called upon to consider the validity of a graduated license fee imposed on *all vehicles* using the highways of the state, whether common carriers engaged in interstate commerce or intrastate commerce, whether private carriers or vehicles not carriers at all, but rather private pleasure cars. In fact, the *Hendrick* case involved the operation of a private passenger car. This Court held that such a license fee was not an undue burden on interstate commerce and that a state, in the exercise of its police power, could require "* * * rightfully prescribed uniform regulations necessary for public safety and order in respect to the operation upon its highways *of all motor vehicles* * * *." (Italics ours.) The

tax mentioned in General Code of Ohio, Section 614-94 (R. 77) is in no wise similar to such a license fee as was considered in the *Hendrick* case. General Code of Ohio, Sections 6292 and 6292-1 (R. 83), imposes a license fee, similar to the one involved in the *Hendrick* case, on all vehicles including pleasure cars as well as commercial cars, carriers as well as non-carriers (R. 83). No contention is made by appellants that such a license tax would be invalid, but no such license fee is attempted to be collected in Ohio. In fact, appellees paid such a license tax to the State of Indiana and obtained the usual license tags that are issued after payment of such tax.

The taxes prescribed by General Code of Ohio, Sections 6292 and 6292-1, are for the purpose of maintaining the highways of the State, as is evident from General Code of Ohio, Section 6291, which reads as follows:

> "Application of annual license tax. An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles and of maintaining and repairing public roads, highways and streets. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the deputy commissioner, at the time of making application for registration as herein provided, and in cases where such deputy commissioner is not county auditor, such monies shall be paid to the county auditor."

This tax is levied upon all motor vehicles and upon payment thereof the owner is entitled to operate his vehicle over any of the highways of the state.

On the other hand, the tax imposed by General Code of Ohio, Section 614-94, is not required to be paid by pleasure

vehicles nor is it required to be paid by any commercial car, not a common carrier. *Hissem* v. *Guram*, 112 O. S. 59. In *Michigan Public Utilities Commission* v. *Duke*, *supra*, this Court held that a state can not, by legislative fiat, convert a private carrier into a common carrier and subject it to the payment of such taxes. Thus, it would seem that interstate common carriers are required, as a condition precedent to engaging in interstate business in Ohio, to pay a very large tax *in addition to the usual graduated license tax required of all vehicles*, even though private carriers and all pleasure and other commercial cars not operating as carriers at all do not have to pay such tax.

Again, not only is the tax imposed by General Code of Ohio, Section 614-94, not levied for the purpose of the upkeep of the highways of the State, but such tax bears no reasonable relation to the use of the highways. If appellants are required first to obtain a certificate of public convenience and necessity, they will be able to operate only along the definite route and between the fixed termini and on regular schedules as to time specified in the application and the certificate. Appellants' operation is chiefly in Indiana and their vehicles come into the State only as far as Cincinnati and probably do not travel more than twenty-five miles on Ohio's highways altogether. On the other hand, a similar operation from Cincinnati to Cleveland, for example, which would cover hundreds of miles of the highways of the State, and would require the payment of no greater tax than appellees seek to impose on appellants for the privilege of engaging in interstate commerce in Ohio.

The tax imposed by General Code of Ohio, Section 614-94, is a direct burden on interstate commerce. Appellees require payment thereof as a prerequisite to engaging in Ohio solely in interstate commerce. It is a tax which is not required of any other motor vehicles, regardless of their use

of the highways of the state, except common carriers and, hence, it can not, in any view of the case, be considered a tax levied for the purpose of regulating and maintaining the highways of the state. Indeed, the Ohio Motor Transportation Act, in express terms, does not apply to private contract carriers, nor even to all common carriers such as taxicabs or sightseeing buses (General Code of Ohio, Section 614-84 [a], R. 70). In other words, the Ohio Motor Transportation Act, as interpreted and applied by appellees, requires the payment of burdensome taxes by certain classes of common carriers, not required of any other motor vehicles. These taxes are in addition to the license taxes required of all vehicles by General Code of Ohio, Section 6292, as is apparent from the express provisions of Section 614-98 (R. 81). Whether the State of Ohio can require the payment of such additional taxes as a condition of motor transportation companies engaging in intrastate commerce in that state is not in question. That the State of Ohio can require the payment of such additional taxes as a condition of motor transportation companies engaging in Ohio solely in interstate commerce, we emphatically deny.

The purpose of the Ohio Motor Transportation Act, by its express terms, is to regulate motor vehicles engaged as common carriers. It is in no sense simply a license tax law, the purpose of which is to register vehicles, in the interest of public safety, and to use the funds derived from such license fees for the maintenance of the highways of the state, such as General Code of Ohio, Section 6292-1. Both by its express terms and as interpreted by the Supreme Court of Ohio, the Ohio Motor Transportation Act is a regulatory measure and the additional taxes imposed thereby are just elements of the regulation. The act itself, 110 Ohio Laws 211, is called, "An act * * * conferring jurisdiction upon The Public Utilities Commission over the

transportation of persons or property for hire in motor vehicles and providing for the supervision and regulation of such jurisdiction. * * *"

The amendment in 111 Ohio Laws 512, styles the act one, "providing for the supervision and regulation of motor transportation." In contrast is the original act which includes what is now known as General Code of Ohio, Section 6292. This act (99 Ohio Laws 538) is styled one "* * * to provide for the registration, identification and regulation of motor vehicles."

The Supreme Court of Ohio in *Hissem* v. *Guram, supra,* held that the Ohio Motor Transportation Act applied to common carriers of the kind mentioned therein and was not intended to and could not apply to any other motor vehicles and that if it were so applied it would be clearly unconstitutional. *Michigan Public Utilities Commission* v. *Duke, supra,* is to the same effect. This strengthens the conclusion that the Ohio Motor Transportation Act is in no sense a general license tax law for the registration of motor vehicles generally, such as was permitted in the *Hendrick* case, but that, on the contrary, it is a measure for the regulation of common carriers. Moreover, the taxes imposed by this regulating measure are not levied merely for the maintenance of the highways of the state, but by the express language thereof (Section 614-96 [2], R. 80), the "State Maintenance and Repair Fund" is available for the use of appellees in defraying the expenses incident to maintaining the bureau of the department for carrying out the Motor Transportation Act, including the payment of salaries, traveling expenses, printing and other expenses. These expenses are incurred by reason of appellees performing the duties of regulating intrastate commerce as required by the act and which is the bulk of their work. It seems clear, therefore, that the tax sought to be imposed

under General Code of Ohio, Section 614-94, does not come within the rule of the *Hendrick* case and *Kane* v. *New Jersey*, 242 U. S. 160, a similar case, but rather is of the kind prohibited by the rule of the *Adams Express Company* case, 232 U. S. 14, heretofore considered.

The *Adams Express Company* case is decisive of the issues in the case at bar. In that case an ordinance of the city of New York prohibited, under a penalty, any person from carrying on certain named businesses, including express business, without a license. There were further provisions requiring the giving of a bond, schedule of rates, provisions as to inspection, etc. The license charges were fixed at a certain rate per express wagon and per driver. The municipal authorities attempted to apply the ordinance to the Adams Express Company, ninety-eight (98%) per cent of the business of which in New York City consisted of transportation of property in interstate commerce. This Court, in granting an injunction restraining the enforcement of the ordinance with respect to the interstate business of the express company, held that the license fee provided by the ordinance "can not be regarded as imposing a fee, or tax, for the use of the streets; if they were such, the question would at once arise as to the validity of the discrimination involved in such an exaction. Nor can they be considered as a regulation in the interest of safety and street traffic. Other ordinances provide for the 'rules of the road' to which wagons of express companies, as well as those of other persons, are subject (p. 32) * * * The sections now under consideration constitute a regulation of the express 'business' (p. 32). * * * While such a requirement may be proper in the case of local or intrastate business, it can not be justified as a prerequisite to the conduct of the business that is interstate (p. 32). * * * It would seem to follow, necessarily, that the annual license fee * * * can not be exacted, so far as the interstate business is con-

cerned. * * * The sums fixed 'for each express wagon' and 'for each driver' measure the amount to be exacted for the granting of the license required for the carrying on of the business. And it is difficult to see how the payment can be enforced as to the interstate business if the taking out of the license therefor can not be compelled" (pp. 32-33).

Likewise, in the case at bar, the payment of additional taxes provided by the Ohio Motor Transportation Act, is a condition to obtaining a license to engage in Ohio in interstate commerce. Similarly, the Ohio statute seeks to regulate the business of common carriers by motor vehicle and in general such statute contains similar provisions.

In the case of *Commonwealth v. O'Neil*, 233 Mass. 537, 124 N. E. 482, the *Adams Express Company* case was compared with the *Hendrick* and *Kane* cases in considering the application to vehicles engaged in interstate commerce of a municipal ordinance prohibiting the driving of motor vehicles for the transportation of persons, within the city, without a license. The ordinance further enjoined upon the board of aldermen various duties of regulation, including the collection of license fees. Chief Justice Rugg, in delivering the opinion of the court, held that the ordinance fell within the rule of the *Adams Express Company* case and that the *Hendrick* and *Kane* cases were not applicable, saying that "arguments that that ordinance might be upheld as imposing a fee for the use of streets, as based upon the nature of the business, or as inspection charges, were summarily disposed of as inapposite or inadequate." The court held that such an ordinance could not be constitutionally applied to interstate commerce.

## CONCLUSION.

We contend that appellants, concededly engaged in Ohio solely in interstate commerce, have the right to conduct

such business without first applying for and obtaining a certificate of public convenience and necessity from The Public Utilities Commission of the state; that appellees, constituting that Commission, can not make the obtaining of such license a condition precedent to engaging in interstate commerce; and that the additional taxes imposed by General Code of Ohio, Section 614 94, are direct burdens on interstate commerce and can not be exacted from appellants as a prerequisite to their carrying on interstate commerce. We urge, therefore, that the decree of the court below be reversed and that appellees be enjoined from interfering in any manner with appellants' motor vehicles when engaged in Ohio in interstate commerce.

Respectfully submitted,

Lester A. Jaffe,
Robert P. Goldman,
*On the Brief.*

Murray Seasongood,
*Solicitor for Appellants.*

## APPENDIX A.

Act of Congress of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938 (Sec. 266 of the Judicial Code)—

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the action of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state, shall be issued or granted by any justice of the Supreme Court, or by any District Court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the state, and to such other persons as may be defendants in the suit: Provided, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only

until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expediated and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the state having jurisdiction thereof under the laws of such state, to enforce such statute or order, accompanied by a stay in such state court of proceedings under such statute or order pending the determination of such suit by such state court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the state. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the state, that the suit in the state courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the District Court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.

## APPENDIX B

**General Code of Ohio, Sec. 614-84.** Defining "motor transportation." (a) The term "motor transportation company," when used in this chapter, means every corporation, company, association, joint stock association, person, firm or co-partnership, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled vehicle not usually operated on or over rails, used in the business of transportation of persons or property, or both, as a common carrier, for hire, under private contract or for the public

in general, over any public highway in this state; provided, however, that the term "motor transportation company" as used in this chapter shall not include any private contract carrier, as defined in section 614-2, and shall not include any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, in so far as they own, control, operate or manage a motor vehicle or motor vehicles used for the transportation of persons or property, or both, and which are operated exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, or in so far as they own, control, operate or manage taxicabs, hotel busses, school busses or sightseeing busses, or in so far as they own, control, operate or manage motor propelled vehicles, the use of which is for the private business of the owners and the use of which for hire is casual and disassociated from such private business.

Defining "public highway." (b) The term "public highway," when used in this chapter, means any public street, road or highway in this state, whether within or without the corporate limits of a municipality.

(Defining "termini and routes.") (c) The words "fixed termini" when used in this chapter shall be understood to refer to the points between which any motor transportation company usually, or ordinarily operates or manages any motor propelled vehicle, and the words "regular route" shall be understood to refer to that portion of the public highway over which any motor transportation company usually, or ordinarily operates or manages any motor propelled vehicle. The words "irregular route," shall be understood to refer to that portion of the public highway over which is conducted any other operation of any motor propelled vehicle by a motor transportation company. Whether or not any motor propelled vehicle is operated by such motor transportation company, between fixed termini or over a regular route or irregular route within the meaning of this chapter, or whether or not the operator or carrier is engaged as a motor transportation company or a private

contract carrier, shall be questions of fact and the finding of the commission thereon shall be a final order which may be reviewed as provided in section 614-89 of the General Code.

Complaints; hearing. And the commission is given jurisdiction to receive, hear and determine any complaint that may be filed in good faith against any private contract carrier that it has ceased to be such and has become a common carrier. Upon such complaint being filed the commission shall set the date for hearing which shall be not less than fifteen days after the filing of the complaint. Upon the date set the commission shall conduct a hearing and if it shall find that the private contract carrier complained against has ceased to be such, such carrier shall become subject to the provisions of this chapter applicable to a motor transportation company, and the commission may proceed in like manner upon its own initiative.

**Sec. 614-85.** (Motor transportation subject to this chapter.) No motor transportation company, its lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any motor propelled vehicle for the transportation of persons or property, or both, for hire, on any public highway in this state except in accordance with the provisions of this chapter.

**Sec. 614-86.** (Powers of Commission.) The public utilities commission of the state of Ohio is hereby vested with power and authority to supervise and regulate each such motor transportation company in this state to fix, alter and regulate rates; to regulate the service and safety of operation of each such motor transportation company; to prescribe safety regulations, and designate stops for service and safety on established routes; to require the filing of annual and other reports and of other data by such motor transportation companies; to provide uniform accounting systems; and to supervise and regulate motor transportation companies in all other matters affecting the relationship between such companies and the public to the exclusion of all local authorities in this state, except as hereinafter otherwise provided. The commission, in the exercise of the juris-

diction conferred upon it by this chapter, shall have the power and authority to presribe rules and regulations affecting such motor transportation companies, notwithstanding the provisions of any ordinance, resolution, license or permit enacted, adopted or granted by any incorporated city or village, city and county, or county, and in case of conflict between any such ordinance, resolution, license or permit, the order, rule or regulation of the public utilities commission shall, in each instance prevail:

(Local regulations.) Provided that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this chapter; provided, further, that no motor transportation company operating under a certificate of convenience and necessity, shall carry persons whose complete ride is wholly within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous thereto, except with the consent of such municipal corporation or municipal corporations.

**Sec. 614 87.** Certificate of public convenience and necessity. No motor transportation company shall begin to operate any motor propelled vehicle for the transportation of persons or property, or both, for hire, between fixed termini or over a regular or irregular route in this state, without first obtaining from the public utilities commission a certificate declaring that public convenience and necessity require such operation.

(Granting of certificate.) The commission shall have the power, after notice and hearing, when the applicant requests a certificate to operate in a territory already served by a motor transpotation company holding a certificate of public convenience and necessity from the commission, to grant a certificate only when the existing motor transportation company or companies serving such territory do not provide the service required or the particular kind of equipment necessary to furnish such service to the satisfaction of the commission, and in all other cases, with or without hearing, to issue such certificates as prayed for, or to refuse to

issue the same, or to issue them for the partial exercise only of the privileges sought, or to issue such certificates for the use of certain kinds of equipment and for the handling of certain kinds of material or merchandise over such routes, and may attach to the exercise of the rights granted by such certificates, such terms and conditions as, in its judgment, the public convenience and necessity may require.

(Affidavit of existing motor transportation company.) Where a motor transportation company has been actually operating in good faith upon the date of filing the original act in the office of the secretary of state, April twenty-eight, nineteen hundred twenty three, it shall file with the commission an affidavit showing its principal place of business, full information concerning the physical property, the route over which it has been operating, the schedule or schedules, together with a map of its route, showing the number of miles of route in each municipality and county into, through or along which such route runs or extends, a statement that it has been actually operating over such route or routes in good faith, together with the liability insurance policy or policies required under section 614-99 of the General Code, and thereupon a certificate of public convenience and necessity shall issue, if the commission shall find the statements in said affidavit to be true. But no certificates shall be granted upon any such affidavit unless the same shall have been filed prior to the passage of this act.

Payment of fee. Upon the payment of the fee provided under section 614-94 of the General Code to the commission, such motor transportation company may continue to operate and shall be governed in all respects as if such motor transportation company had made a written application.

(Refusal of Certificate.) Before granting any certificate the commission shall take into consideration other existing transportation facilities in the territory for which a certificate is sought, and in case it appears from the evidence that the service furnished by existing transportation facilities is reasonably adequate the commission shall not grant such certificate.

Suspension and revocation. The commission may at any time for a good cause suspend, and upon at least five days'

notice to the grantee of any certificate and an opportunity to be heard, revoke, alter or amend any certificate issued under the provisions of this chapter.

On finding of the public utilities commission that any motor transportation company does not give convenient and necessary service in accordance with the order of such commission such motor transportation company shall be given a reasonable time, not less than sixty days, to provide such service before any existing certificate is cancelled or a new one granted over the route mentioned in the finding and order of or hearing before the public utilities commission.

**Sec. 614 87a.** (Death of operator; effect of.) Upon the death of a person operating as a motor transportation company under a certificate of public convenience and necessity, his personal representative or representatives may operate under such certificate while the same remains in force and effect, and, with the consent of the commission may transfer such certificate.

(Dissolution of partnership.) Upon the dissolution of a partnership operating as a motor transportation company under a certificate of public convenience and necessity, caused by death or otherwise, in the event the surviving or remaining partner or partners acquire the assets of the partnership, the partner or partners so acquiring such assets may continue to operate under such certificate while the same remains in force and effect, and with the consent of the commission, may transfer such certificate; upon the dissolution of a partnership operating a motor transportation company under a certificate of public convenience and necessity, caused by death, in the event the surviving partner or partners do not acquire the assets of the partnership, then such surviving partner or partners and the personal representative or representatives of the deceased partner or partners may transfer such certificate with the consent of the commission.

(Transfer of Certificate.) In all other cases a certificate of public convenience and necessity shall not be transferred except with the consent of the commission, after a public hearing had thereon.

**Sec. 614-88.** Consent to operate must be first secured. Except as provided in section 614-84, no corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney, bus, truck, state, auto stage, or rent for hire car, for the transportation of persons or property or both, for compensation, over any public street, road or highway in this state between fixed termini or over a regular or irregular route, over which any motor transportation company is operating under a certificate of convenience and necessity issued by the commission as provided in this act, until such corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall have secured a certificate of public convenience and necessity or permission from the commission to so operate, and then only in strict accordance with such rules as the commission may prescribe for such operation.

**Sec. 614-89.** Applications and complaints made and filed with commission. In all respects in which the public utilities commission has power or authority under this act (G. C. Secs. 614-2, 614-84 to 614-102, and 6292), applications and complaints may be made and filed with such commission, processes issued, hearings held, opinions, orders and decisions made and filed, petitions for re hearings filed and acted upon, and all proceedings before the supreme court of this state considered and disposed of by such court in the manner, under the conditions and subject to the limitations and with the effect specified in the sections of the General Code governing the supervision of other public utilities by the commission.

**Sec. 614-90.** Rules governing application for certificates of public convenience and necessity. The commission shall adopt rules prescribing the manner and form in which such motor transportation companies as defined in this act (G. C. Secs. 614-2, 614-84 to 614-102 and 6292) shall apply for the certificates of public convenience and necessity. Among other rules adopted there shall be the following:

(a) Application shall be made in writing on the blanks furnished by the commission and shall show the principal

office or place of business and residence of such motor transportation company.

(b) Shall contain full information concerning the physical property used or to be used by the applicant.

(c) The complete route over which the applicant operates or desires to operate, showing the number of miles of said route in each municipality and county.

(d) The proposed time schedule or schedules or time cards of the applicant, if operating between fixed termini or over a regular route.

(e) The schedule or tariff showing the passenger or freight rates to be charged between the several points, if operating between fixed termini or over a regular route.

Sec. 614 91. (Application shall contain map of route.) Such application shall contain a map, showing the highway or highways and public places upon and over which such motor transportation company is to operate, and the number and kind of motor vehicles to be used in carrying on the business of such motor transportation company.

(Notice of filing.) The applicant shall give notice of the filing of such application by publication made once a week for three weeks immediately prior to the day set for said hearing, in a newspaper of general circulation published at the county seat of each county in or through which the applicant proposes to operate, or in one newspaper published in and of general circulation throughout the territory in or through which the applicant proposes to operate. Such published notice shall state the fact that such application has been made, the route proposed to be operated, the number of motor vehicles to be used, the number of trips to be made daily, and the name and address of the applicant. Upon application for a certificate to operate between fixed termini or over a regular route, the commission shall give written notice of the filing of such application to all motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which the applicant proposes to operate.

Date for hearing. The commission shall after the filing of such application, fix a date for hearing upon the same,

unless the commission in its discretion deems such hearing unnecessary and the best interests of the public require that said application be granted or rejected without such hearing. When a date for the hearing is fixed the commission shall give the applicant, all other motor transportation companies, street railroads, interurban railroads and steam railroads operating in the territory through which the applicant proposes to operate at least ten days' notice of such hearing.

(Amending application.) The applicant shall have the right, either before or after hearing or action by the commission to amend, modify or alter such application by filing with the commission an amendment to such application or a supplemental application which shall in turn be considered by the commission and be governed in the same manner as is provided in case of an original application.

**Sec. 614-92.** Operation restricted to specified routes. Except as otherwise expressly provided, it shall be unlawful for any motor transportation company as defined in this act (G. C. Secs. 614-2, 614-84 to 614-102 and 6292) to operate in this state on any route, other than the route provided for in the certificate granted by the commission; or to fail or refuse to operate on the whole of the route, in the manner and at the time specified in the certificate; except in case of emergency due to the act of God or unavoidable accident or casualty or the route becoming impassable, or in case it becomes necessary to make temporary detours; and it shall be unlawful for any such motor transportation company to neglect or refuse to comply with and obey any and all regulations and orders of the commission and other statutory laws and regulations of the state of Ohio governing and applying to such motor vehicles, provided, however, that nothing in this act shall prohibit a motor transportation company as defined hereunder and not operating between fixed termini from making casual trips over routes established hereunder.

**Sec. 614-93.** New application may be filed. Any motor transportation company as defined in this chapter (G. C. Secs. 487 to 614-102) may, at any time after a certificate

is granted or refused, file a new application or supplement any former application, for the purpose of changing, extending or shortening the route, or increasing or decreasing the number of vehicles or for the doing of any other act or thing which the applicant might be permitted to do under the general statutory laws and regulations of the state of Ohio.

Sec. 614-94. Taxes paid to treasurer of state. Every motor transportation company now operating or which shall hereafter operate in this state shall at the time of the issuance of such certificate, and annually thereafter on or between January 1st and January 15th of each calendar year, pay to the treasurer of state the following taxes for the expense of the administration and enforcement of the provisions of sections 614-84 to 614-102 of the General Code, and for the maintenance and repair of the highways of the state; all taxes levied upon the issuance of a certificate to any motor transportation company shall be reckoned as from the beginning of the quarter in which such certificate is issued.

Rates. For each motor propelled vehicle operating between fixed termini or over a regular route, carrying seven passengers or less, forty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, ninety dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, one hundred and forty dollars; for each such motor propelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and eighty dollars; and for each such motor propelled vehicle carrying more than twenty four passengers, two hundred and thirty dollars.

For each motor propelled vehicle not operating between fixed termini or over a regular route, carrying seven passengers or less, twenty dollars; for each such motor propelled vehicle carrying more than seven but not more than twelve passengers, fifty dollars; for each such motor propelled vehicle carrying more than twelve but not more than eighteen passengers, ninety dollars; for each such motor pro-

pelled vehicle carrying more than eighteen but not more than twenty-four passengers, one hundred and fifteen dollars; and for each such motor propelled vehicle carrying more than twenty-four passengers, one hundred and fifty dollars.

For each motor propelled vehicle used for transporting property between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, forty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths tons but not more than two and one-half tons, eighty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred and forty dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, two hundred dollars.

For each motor propelled vehicle used for transporting property not between fixed termini or over a regular route the manufacturer's rated carrying capacity of which is one and three-fourths tons or less, twenty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than one and three-fourths but not more than two and one-half tons, fifty dollars; for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than two and one-half but not more than three and one-half tons, one hundred dollars; and for each such motor propelled vehicle the manufacturer's rated carrying capacity of which is more than three and one-half tons, one hundred and fifty dollars.

For each motor propelled vehicle used by any such company for transporting both persons and property simultaneously the tax shall be computed on the basis of either tonnage or passenger capacity and the basis which yields the greater revenue shall apply.

Trailer. A trailer used by a motor transportation company hereunder shall be taxed at a rate equal to twenty per cent of that levied upon the vehicle by which it is drawn.

In case of emergency, or unusual temporary demands for transportation, the taxes for additonal motor propelled vehicles for limited periods shall be fixed by the commission in such reasonable amounts as may be prescribed by general rule or temporary order.

Sec. 614-94a. (Operation over irregular route.) When any motor transportation company holds a certificate for operation between fixed termini or over a regular route and also holds a certificate for operation over an irregular route, such motor transportation company may operate over such irregular route and in such irregular service any motor propelled vehicle upon which the tax for operation over a regular route has been paid as required by the provisions of this chapter without the further payment of the tax required of motor propelled vehicles operating over irregular routes.

Sec. 614-95. Division of tax. The treasurer of state shall open an account with each municipal corporation and county into, through or along which the route of each such motor transportation company runs or extends, and shall apportion fifty per cent of the taxes imposed by section 614-94 in accordance with the lineal miles of route in each municipal corporation and county. The remaining fifty per cent of such taxes shall belong to the state of Ohio and shall be paid into the state treasury to the credit of the state maintenance and repair fund.

Duties of treasurer of state with regard to taxes. The treasurer of state shall be the custodian of such funds and shall disburse the same in the manner provided in section 614-96 of the General Code. The treasurer of state is hereby authorized to deposit any portion of the funds due municipal corporations and counties into, through or along which the route runs of extends, not needed for immediate distribution, in the same manner and subject to all the provisions of law with respect to the deposit of active state funds by such treasurer; and all interest earned by such funds so deposited shall be collected by him and placed in the state treasury to the credit of the "state maintenance and repair fund." On the first business day of each month, the auditor

of state on the requisition of the treasurer of state shall draw and transmit to the auditor of each county a warrant on the treasurer of state for the amount of the tax collections apportioned to the municipal corporations and counties into, through or along the route of such motor transportation company runs and extends, accompanying the same with a statement showing the distribution of the amount represented thereby to each such municipal corporation or county. The county auditor shall certify the amount so transmitted into the county treasury to be disposed of as herein provided.

**Sec. 614-96.** Distribution of revenue. The revenue collected under the provisions of section 614-94 of the General Code shall be distributed as follows:

(1) Fifty per centum of all taxes collected under section 614-94 of the General Code shall be for the use of the municipal corporations or counties into, through and along which the route of such motor transportation company runs and extends. Such moneys shall be paid into the treasury of the proper county as provided herein and the proper portions distributed to the municipal corporations in accordance with the miles of route in such municipal corporation. In the treasuries of such municipal corporations and counties, such money shall constitute a fund which shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose, and shall not be subject to transfer to any other fund. "Maintenance and repair" as used in this section includes all work done upon any public road or highway or upon any street, in which the existing foundation thereof is used as the subsurface of the improvement thereof, in whole or in substantial part.

(2) The "state maintenance and repair fund" shall be available for the use of the public utilities commission of Ohio in defraying the expenses incident to maintaining the bureau of the department for carrying out and enforcing the provisions of sections 614-84 to 614-102, inclusive, of the General Code, including the payment of salaries, traveling expenses, printing and other expenses, and for the use of the director of highways and public works in the manner

provided by law. The General Assembly shall make appropriations therefrom for such purpose.

**Sec. 614-97.** Qualifications of chauffeur or driver. It shall be unlawful for any motor transportation company as defined in this chapter (G. C. Secs. 487 to 614-102) to cause, allow or permit any motor propelled vehicle operated by it as a motor transportation company to be driven by any person under the age of twenty-one years; and such person shall be an American citizen and shall be skilled in the art of driving such public motor vehicles, and without physical disabilities or personal habits which would disqualify him or make him an unsuitable person to serve as driver of such public motor vehicle.

For the purpose of determining the qualifications of such chauffeur or driver, the secretary of state shall be governed by section 6302 of the General Code, in so far as the same may be applicable.

Examination and license of drivers. Upon the issuance of the certificate to drive, the applicant shall pay the registration fee and no further fee shall be charged or examination required by the state or any local authorities in the state. The term "local authorities" as used herein means all officers, boards and commissions of counties, cities, villages or townships. In case of sickness, accident or other emergency, any other licensed driver may be substituted.

**Sec. 614-98.** Fees, charges, etc. The fees and charges provided under section 614-94 of the General Code shall be in addition to taxes, fees and charges fixed and exacted by other provisions of the general laws of Ohio; except the assessments required by section 606 of the General Code, but all fees, license fees, annual payments, license tax, or taxes or other money exactions, except the general property tax, assessed, charged, fixed or exacted by local authorities, such as municipalities, townships, counties, or other local boards, or the officers of such subdivisions shall be deemed to be illegal and be superseded by this act (G. C. Secs. 614-2, 614-84 to 614-102 and 6292). On such motor transportation company complying with the provisions of this act, all local ordinances, resolutions, by laws and rules in force shall

cease to be operative as to them, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with the provisions of this act.

**Sec. 614-99.** (Bond of operator; terms.) No certificate of convenience and necessity shall be issued by the commission to any motor transportation company until such motor transportation company shall have filed with the commission a liability insurance policy or bond satisfactory to the commission in such sum and with such other terms and provisions as the commission may deem necessary adequately to protect the interests of the public having due regard for the number of persons and amount of property affected, which policy, policies or bonds shall insure the motor transportation company against loss sustained by reason of the death of or injuries to persons and for loss of or damage to property resulting from the negligence of such motor transportation company, and shall have filed with the commission a freight cargo insurance policy or bond adequately to protect the interests of the shipping public, which policy or bond shall insure the motor transportation company against all loss in excess of fifty dollars sustained by reason of any loss or damage to the property being transported.

Further provisions. Such policy or bond shall further provide that ten days' notice in writing shall be given to the public utilities commission of intention to cancel such policy of insurance.

(Replacing bond.) If such policy or bond is cancelled during the term thereof or in event the same should lapse for any reason, the commission shall require such motor transportation company to replace such policy or bond with another fully complying with the requirements of this section, and in default thereof the certificate shall be deemed revoked.

**Sec. 614-100.** Penalty for violation. Every officer, agent or employe of any corporation, and every other person who violates or fails to comply with or who procures, aids or abets in the violation of any provision of sections 614-84 to 614-102, inclusive, of the General Code, or who fails to obey, observe or comply with any order, decision, rule or

regulation, direction, demand or requirement, or any part or provision thereof, of the public utilities commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, demand or regulation, or any part or provision thereof, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

**Sec. 614-101.** (Intrastate commerce only.) Neither sections 614-84 to 614-102, inclusive, of the General Code, nor any provisions thereof, shall apply or be construed to apply to commerce with foreign nations or countries, or among the several states of this Union, except in so far as the same may be permitted under the provisions of the constitution of the United States and the acts of congress.

**Sec. 614-102.** Each section and part thereof independent. Each section of this act (G. C. Secs. 614-2, 614-84 to 614-102 and 6292), and every part thereof, is hereby declared to be independent sections and parts of sections, and the holding of any section of part thereof to be void or ineffective for any cause shall not affect any other section or part thereof.

**Sec. 6291.** Application of annual license tax. An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles and of maintaining and repairing public roads, highways and streets. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the deputy commissioner, at the time of making application for registration as herein provided, and in cases where such deputy commissioner is not county auditor, such monies shall be paid to the county auditor.

**Sec. 6292.** (Schedule of rates.) Each owner of a motor bicycle, motorcycle or passenger car shall pay or cause to be paid taxes as follows:

For each motor bicycle or motorcycle, two dollars and fifty cents; and for each side car, one dollar and fifty cents.

For the calendar year 1925 and if House Bill 44 enacted by this section of the General Assembly shall not have become a law, for each calendar year thereafter, for each passenger car having twenty-five horse-power or less, eight dollars; for each such car having more than twenty-five and not more than thirty-five horsepower, twelve dollars; and for each such car having more than thirty-five horsepower, twenty dollars.

If House Bill 44, enacted by this session of the General Assembly, shall become a law, then for the calendar year 1926 and each calendar year thereafter, for each passenger car having twenty-five horsepower or less, four dollars; for each such car having more than twenty-five and not more than thirty-five horsepower, six dollars; for each such car having more than thirty-five horsepower, ten dollars.

**Sec 6292-1.** (Schedule of rates continued.) Each owner of a commercial car, trailer or semi-trailer, shall pay or cause to be paid taxes as follows:

For each commercial car having motor power and for each trailer or semi-trailer, seventy cents per one hundred pounds or part thereof, for the first two thousand five hundred pounds or part thereof of weight of vehicle fully equipped; ninety cents per one hundred pounds for each one hundred pounds or part thereof in excess of two thousand five hundred pounds up to and including six thousand pounds; one dollar for each one hundred pounds or part thereof in excess of six thousand pounds up to and including nine thousand pounds; one dollar and fifteen cents for each one hundred pounds or part thereof in excess of nine thousand pounds.

Minimum tax. The minimum tax for any vehicle having motor power other than a motor bicycle or motorcycle shall be eight dollars for the calendar year 1925, and four dollars for each year thereafter; and for each trailer or semi-trailer two dollars and fifty cents.

Each manufacturer or dealer shall pay or cause to be paid a tax of twenty dollars for each place of business in this state.